

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ADAM ANAYA,

Defendant and Appellant.

H034890

(Santa Clara County

Super. Ct. Nos. CC816515, CC948399)

Defendant Adam Anaya pleaded no contest to vandalism and admitted violating probation in another case. The trial court imposed a two-year and eight-month prison sentence and a \$10 crime prevention fine based on Penal Code section 1202.5. On appeal, defendant contends that no substantial evidence supports that he had the ability to pay the fine. We affirm the judgment.

BACKGROUND

The parties agree that the trial court imposed a \$10 fine pursuant to Penal Code section 1202.5. Defendant did not raise any objection to the imposition.

DISCUSSION

Penal Code section 1202.5, subdivision (a), requires that in any case where a defendant is convicted of, among other crimes, vandalism, the trial court “shall” impose a \$10 fine “in addition to any other penalty or fine imposed.” It further provides: “If the court determines that the defendant has the ability to pay all or part of the fine,” it shall set the amount and order him to pay the ordered sum “in the manner . . . the court

believes reasonable and compatible with the defendant's financial ability." The final sentence requires the trial court, in making that determination, to consider the amount of other imposed fines and restitution.

Defendant contends that "there was insufficient evidence of his ability to pay a fine ordered pursuant to Penal Code section 1202.5."

Defendant has forfeited any error in this regard. When a statute mandating imposition of a fine requires a consideration of the ability to pay, the defendant must raise the issue in the trial court by objecting or demanding a hearing, especially when the probation report recommends imposition of such a fine as does the probation officer's waived referral report in this case. If he fails to do so, he forfeits the issue on appeal. (*People v. McMahan* (1992) 3 Cal.App.4th 740, 749-750.) This principle was specifically at issue in the context of a Penal Code section 1202.5 fine: "Since defendant did not raise the issue in the trial court, we reject his contention that the fines must be reversed because the court did not make a finding of defendant's ability to pay them, and nothing in the record shows he had the ability to pay." (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371.) Defendant overlooks *Crittle*.

We add that defendant's contention fails on the merits given that the trial court could have reasonably inferred that defendant would be able to obtain prison employment which would permit him to pay the de minimus fine: the probation report for defendant's prior case in which he admitted violating probation indicates that defendant worked as a roofer earning \$500 per week during 2006-2008.

DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.